85-2146

No. - .

Supreme Court, U.S.
FILED
JUN 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

# In the Supreme Court of the United States.

OCTOBER TERM, 1985.

PATRICK QUEMENER, YANN BOEDEC,
STEVEN SEWARD,
PETITIONERS,

*v.*

UNITED STATES OF AMERICA,
RESPONDENT.

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.**

JOSEPH S. OTERI,
*Counsel of Record,*
JAMES W. LAWSON,
OTERI, WEINBERG & LAWSON,
75 Blossom Court,
Boston, Massachusetts 02114.
(617) 227-3700

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

64 pp

## Questions Presented for Review.

I. Whether the coast of the United States is properly defined for law enforcement purposes by decisions of the United States Supreme Court in civil cases or by reference to international law principles defining the territorial sea and decisions interpreting previous anti-smuggling treaties?

II. Whether "the Atlantic Coast" of the United States as set forth in the "United States-United Kingdom Agreement on Narcotic Drugs: Interdiction of Vessels" (1981) is properly defined by decisions of the United States Supreme Court in civil cases or by reference to international law principles defining the territorial sea and decisions interpreting previous anti-smuggling treaties with the United Kingdom?

**Parties to the Proceeding.**

The parties to the proceeding below and in this petition are the United States (the prosecution) and Patrick Quemener, Yann Boedec, and Steven Seward (the defendants). Supreme Court Rule 21.1(b) and 28.1.

## Table of Contents.


Opinions below 2

Jurisdiction 2

Constitutional and statutory provisions involved 2

Statement of the case 3

Reasons why the writ should be granted 9

I. The boarding and seizure of the MARGIE was unlawful because at the time of the boarding it was outside the 150 mile limit prescribed by the agreement between the United States and the United Kingdom 9

A. The definition of the Atlantic coast of the United States employed by the second circuit is directly at odds with language in a substantial number of decisions of this court in civil cases 11

B. Lower court decisions interpreting prior anti-smuggling treaties (with different terms), which precede the substantial number of Supreme Court decisions on the subject are not controlling in defining the coast 11

C. International law principles as to the definition of the territorial sea or the existence of a territorial sea around an island are not relevant and controlling sources for a definition of the coast or the Atlantic coast 15

D. A treaty/agreement is the law of the land and its terms should be strictly complied with; thus a definition of a critical term will serve the defendants and justice 17

Conclusion 18

Appendix follows p. 19

## Table of Authorities Cited.

CASES.

*Supreme Court decisions*:

Ford v. United States, 273 U.S. 593, 47 S.Ct. 531, 71 L.Ed. 793 (1927) 12, 13, 14

Reid v. Covert, 354 U.S. 1, 77 S.Ct. 1222, 1 L.Ed.2d 1148 (1957) 19

United States v. California, 381 U.S. 139, 85 S.Ct. 1401, 14 L.Ed.2d 296 (1965) 11, 15

United States v. Louisiana, 394 U.S. 1, 89 S.Ct. 768, 22 L.Ed.2d 36 (1969); reh. denied, 394 U.S. 994, decree supplemented, 394 U.S. 836 (1969) 11, 18

United States v. Maine, ___ U.S. ___, 105 S.Ct. 992, 83 L.Ed.2d 998 (1985) 11, 15

United States v. Maine (the Massachusetts Boundary Case), 452 U.S. 429, 101 S.Ct. 3074, 69 L.Ed.2d 132 (1981) 11

United States v. Pink, 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796 (1942) 19

*Court of Appeals decisions*:

Middleton v. United States, 32 F.2d 239 (5th Cir. 1929) 12

The Miss C.B., 63 F.2d 639 (5th Cir. 1933) 14

United States v. Arra, 630 F.2d 836 (1st Cir. 1980) 13n

United States v. Cadena, 585 F.2d 1252 (5th Cir. 1978) 9n

United States v. Green, 671 F.2d 46 (1st Cir. 1982) 9

United States v. Henning, 7 F.2d 488 (S.D.Ala. 1925), rev'd on other grounds sub nom. Hennings v. United States, 13 F.2d 74 (5th Cir. 1926) 14

United States v. Hensel, 699 F.2d 18 (1st Cir.), cert. denied, 103 S.Ct. 2431 (1983) 9n

United States v. Marsh, 747 F.2d 7 (1st Cir. 1984) 9

United States v. Romero-Galue, 757 F.2d 1147 (11th Cir. 1985) 16

United States v. Warren, 578 F.2d 1058 (5th Cir. 1978) (en banc), cert. denied, 446 U.S. 956, 100 S.Ct. 2928 (1980) 9n

United States v. Williams, 617 F.2d 1063 (5th Cir. 1980) 9

United States v. Wright-Barker, 784 F.2d 161 (3d Cir. 1986) 16, 17

*District Court Cases*:

The Golmaccam, 8 F.Supp. 338 (D.Me. 1934) 14

The Mazel Tov, 51 F.2d 292 (D.R.I. 1931), rev'd on other grounds, 56 F.2d 921 (1st Cir. 1932), rev'd sub nom. Cook v. United States, 288 U.S. 102, 53 S.Ct. 305, 77 L.Ed. 641 (1933) 14

STATUTORY PROVISIONS.

14 U.S.C. § 89(a) 9n

19 U.S.C. § 1401(i) 9

19 U.S.C. § 1571(h) 9

19 U.S.C. §§ 1701-1711 16

21 U.S.C. § 841(a) 3

21 U.S.C. § 846 4

21 U.S.C. § 952 4

21 U.S.C. § 955(a)(d) 3, 4, 16
21 U.S.C. § 955c 3, 4, 16
28 U.S.C. 1254(1) 2

## OTHER AUTHORITIES.

J. Brierly, The Law of Nations 186 (3d ed. 1942) 13n
Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607, T.I.A.S. No. 5639 (1964) 11
"Harvard Research in International Law, Jurisdiction With Respect to Crime," 29 Am.J. Int'l L. 435, 484-485 (Supp. 1935) 13n
House of Representatives Report, No. 868, 74th Cong., 1st Sess. 7 (1935) 16
P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction (1927) 14
Senate Report, No. 1036, 74th Cong., 1st Sess. 11 (1935) 16
4 M. Whiteman, Digest of International Law (1965) 14

No. - .

# In the Supreme Court of the United States.

OCTOBER TERM, 1985.

PATRICK QUEMENER, YANN BOEDEC,
STEVEN SEWARD,
PETITIONERS,

*v.*

UNITED STATES OF AMERICA,
RESPONDENT.

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.**

The petitioners, Patrick Quemener, Yann Boedec, and Steven Seward, pray that this Honorable Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on April 28, 1986.

## Opinions Below.

Petitioners' appeals were heard by a panel of the Second Circuit which issued an opinion affirming petitioners' convictions on April 28, 1986, published at 789 F.2d 145, which opinion is reproduced herein in the Appendix at 1a.

## Jurisdiction.

The judgment of the United States Court of Appeals for the Second Circuit was entered on April 28, 1986. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

## Constitutional, Treaty and Statutory Provisions Involved.

U.S. Constitution, Article 6, cl. 2:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land . . .

The Agreement Between the United States of America and the United Kingdom of Great Britain and Northern Ireland on Narcotic Drugs: Interdiction of Vessels, is set forth in the Appendix at 24a.

Statutory provisions involved are:

*21 U.S.C. § 955a(d) (Count I of the indictment)*

Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels.

Vessels of United States or vessels subject to jurisdiction of United States on high seas.

. . . . . .

(d) It is unlawful for any person to possess, manufacture, or distribute a controlled substance —

(1) intending that it be unlawfully imported into the United States; or
(2) knowing that it will be unlawfully imported into the United States.

*21 U.S.C. § 955c (Count II of the indictment)*

Attempt or conspiracy.

Any person who attempts or conspires to commit any offense defined in sections 955a to 955d of this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**Statement of the Case.**

In October, 1984, a grand jury sitting in the District of Connecticut returned a five count indictment against defendants Quemener, Boedec and Seward, arising out of a seizure on the high seas by the United States Coast Guard of the sailboat MARGIE, a British registered vessel. The Master of the MARGIE, Steven Seward, is a British national and her crew, Yann Boedec and Patrick Quemener, are French nationals. That indictment charged defendants with possession of marijuana on board the MARGIE with intent to import into the United States in violation of 21 U.S.C. § 955a(d) (Count I); conspiracy to possess marijuana on board the MARGIE with intent to import into the United States in violation of 21 U.S.C. § 955c (Count II); possession of marijuana with intent to distribute in violation of 21 U.S.C. § 841(a) (Count III); conspiracy to possess marijuana with intent to distribute in violation

of 21 U.S.C. § 846 (Count IV); and attempted importation of marijuana in violation of 21 U.S.C. § 952 (Count V).

Hearings were held in the district court in February 1985 on the defendants' motion to suppress and motion to dismiss for lack of jurisdiction, and said motions were denied in May 1985. A jury trial began on May 21, 1985. At the close of the prosecution's case, the trial judge dismissed Counts III-V on grounds of multiplicity and denied the defendants' motions for judgment of acquittal. The latter motions were renewed at the close of all the evidence and again denied, as were post-trial motions for judgment of acquittal or for a new trial. Petitioners were convicted of possessing and conspiring to possess marijuana with the intention of unlawfully importing it into the United States in violation of 21 U.S.C. §§ 955a(d) and 955c. Judgment entered on July 19, 1985 (Quemener and Boedec) and July 23, 1985 (Seward). Quemener and Boedec were sentenced to prison for five (5) years and fined five thousand dollars ($5,000) on each count, the sentences to run concurrently. Seward was sentenced to five (5) years and fined five thousand ($5,000) on Count One and to four (4) years and a fine of five thousand ($5,000) on Count Two, the sentences to run consecutively, for a total of nine (9) years imprisonment and a fine of ten thousand dollars ($10,000).

On September 25, 1984, a United States Coast Guard patrol plane advised the Coast Guard cutter EVERGREEN, which was on law enforcement patrol, that the pilot had spotted a forty-foot sailboat, later identified as the MARGIE, which was heading north approximately 216 miles from the southeast tip of Nantucket Island and 236 miles from Chatham, Massachusetts, the nearest mainland coastal point. The EVERGREEN's patrol orders were to intercept vessels "heading in a general east to northeast direction, which appeared not to be fishing and were under 300 feet in length."

Evidence was presented at the trial that Commander Shaw of the EVERGREEN found it unusual for a small boat to be heading north in the fall, and that only a few such boats had been observed during the EVERGREEN's twelve-day patrol. Immediately upon receiving notice of the airplane sighting, the EVERGREEN set a course to intercept the MARGIE. About an hour and a half after the report of sighting, the patrol plane reported to the EVERGREEN its observation that the MARGIE was still headed north in the same direction as before and that it was positioned approximately 5 miles north-northeast of its initially reported position.

At about 4:15 P.M. (about four and one-half hours after the first sighting by the patrol plane) the EVERGREEN made first visual and radar contact with the MARGIE. Evidence at the trial was that Commander Shaw observed from a distance of about 800-900 yards, using binoculars, that the MARGIE appeared to be heavily laden, down in the bow and generally riding low in the water. There was no dispute that the sailboat was properly displaying her name and hailing port and flying the British flag. It was confirmed by the Coast Guard on the same day of the sighting that the MARGIE was of British registry.

Radio contact with the MARGIE established that Steven Seward was the master of the boat, that the MARGIE's home port was Road Bay Anguilla in the British West Indies, and that Mr. Seward was a British citizen (and spoke with a British accent). The MARGIE's last port of call was identified as Tortola, British Virgin Islands. A communication from the EVERGREEN to the Atlantic Area Commandant at 5:25 P.M. on the day of the sighting stated that the MARGIE's destination was St. John's, Canada; a subsequent telex and the aircraft pilot's investigation report were to a similar effect. The EVERGREEN's radio operator testified that while he remembered saying St. John's Newfoundland, he nonetheless recorded it as St. John's,

Canada.* Testimony given by Commander Shaw at the trial, however, was that Mr. Seward stated, upon inquiry, that the MARGIE's next port of call was St. John's, Newfoundland.

Seward sought advice regarding an oil line problem, and was informed by a technician on the EVERGREEN that the corrective measures he had taken were sufficient and proper. The Coast Guard, upon inquiry, was advised by Mr. Seward that he thought that the two crew members on the boat were French citizens, although he had not spoken to either of them very much during the nine days they had been sailing together. Seward also communicated that they were transporting the sailboat to a Mr. Baker, and that he thought the boat had been sold.

At the trial, Commander Shaw testified that he was suspicious of the MARGIE because (1) Seward did not seem to know much about his crew members after making a nine-day voyage with them in such a small boat; (2) that Captain Seward was vague as to the details of the boat's intended delivery, and (3) that the MARGIE was about 70 degrees off course for Newfoundland. The Commander also testified, however, that none of the 16 factors which the Coast Guard normally uses as "suspicious circumstances" which would justify intercepting a vessel were applicable to the MARGIE.

Commander Shaw initially requested to board the MARGIE while she was approximately 200 miles off the United States coast. Captain Seward "affirmatively and politely" denied Commander Shaw's request to board the MARGIE. At 6:00 P.M., Commander Shaw again requested permission to board the MARGIE and was again "politely and firmly" denied permission by Captain Seward.

---

* *St. John* lies approximately sixty miles north of Maine's Canadian border in the Province of New Brunswick; *St. John's* lies approximately 1200 miles to the east, in the Province of Newfoundland. The dispute over announced destination became significant in light of Commander Shaw's testimony that the MARGIE was suspiciously off course for Newfoundland.

After receiving from Seward the full names, dates of birth, and addresses of all those aboard the MARGIE, at about 7:00 P.M., the EVERGREEN ran an EPIC (El Paso Criminal Intelligence Center) check on all three. The check was negative as to the MARGIE herself, Mr. Quemener and Mr. Boedec, but reported that Seward had been involved in early 1984 in cocaine smuggling into the British West Indies or the British Virgin Islands, using a boat of similar appearance to, but bearing a different name from the MARGIE.

Later that evening (September 25) the EVERGREEN requested permission from its operational commander to board the MARGIE (1) if she came within 150 miles of the Atlantic coast of the United States, pursuant to the agreement between the United States and the United Kingdom with respect to interdiction of vessels on the high seas (see A. 29a); or (2) if the consent of the British government to a boarding outside the 150 mile limit could be obtained. No consent to board was obtained from the British government.

The EVERGREEN followed the MARGIE throughout the night of September 25, closing to about 500 yards at 6:30 A.M. on September 26, 1984. At 10:53 A.M., Commander Shaw set the "Law Enforcement Boarding Bill," which activates the standard procedures preparatory to boarding, and at 10:58 A.M., informed the Atlantic Area Operations Center that the MARGIE was turning east, and requested immediate permission from his Coast Guard superiors to board her. Such permission was received at 11:40 A.M., and the MARGIE was promptly ordered "to heave to and stand by for boarding by a United States Coast Guard Boarding Team under the provisions set forth by a US/UK agreement dealing with smuggling of drugs." A report at 11:51 A.M. from the EVERGREEN indicated that the MARGIE was in fact heading north-northeast. The MARGIE was boarded without resistance at 12:04 P.M. Her location at the time of boarding was 141.5 miles from the southeast tip of Nantucket Island and 159 miles from

the nearest coastal point on the mainland, Chatham, Massachusetts. The record reflects that once the boarding order was transmitted to the MARGIE, she was not free to leave.

Evidence at the trial was that as the boarding party circled the MARGIE, they smelled marijuana and observed that the back portholes were covered by charts. They announced that they were boarding under the United States-United Kingdom agreement regarding drug trafficking. Upon entering the cockpit, the leader of the boarding party observed a number of bales, which field tested positive for marijuana.

Among the charts found aboard the MARGIE was one showing the eastern coast of North America up to St. John's Newfoundland (including St. John, New Brunswick, Canada) and a harbor guide containing information relative to entry into the Bay of Fundy. Another seized chart showed a pencil line running to the area of the Bay of Fundy near St. John, Canada. Although the defendants contended (and still contend) that there was no intent against the United States, and moved to dismiss for lack of jurisdiction over the offense and their persons, the district court found jurisdiction on the basis that the defendants were charged with violations of Title 21 and on the reasoning of *United States* v. *Arra*, 630 F.2d 836, 840 (1st Cir. 1980) that "A sovereign may exercise jurisdiction over acts done outside its geographical jurisdiction which are intended to produce detrimental effects within it."

## Reasons Why the Writ Should Be Granted.

### I. The Boarding and Seizure of the MARGIE Was Unlawful Because at the Time of the Boarding it Was Outside the 150 Mile Limit Prescribed by the Agreement Between the United States and the United Kingdom.

The MARGIE's status as a British registered vessel on the high seas* carrying only foreign nationals is undisputed. The Coast Guard may board such a vessel only if so authorized by a "special arrangement" with the nation of registry. 19 U.S.C. § 1571(h); 19 U.S.C. § 1401(i).* *See, e.g., United States* v. *Marsh,* 747 F.2d 7 (1st Cir. 1984); *United States* v. *Green,* 671 F.2d 46, 51-52 (1st Cir. 1982); *United States* v. *Williams,* 617 F.2d 1063 (5th Cir. 1980) (in these three cases, express consent of the foreign sovereign was obtained prior to boarding, which consent was found essentially to waive objection to violation of any otherwise applicable treaty provisions). No such consent was obtained in this case.

Where there is a "special arrangement" with a foreign sovereign, the law enforcement powers of the Coast Guard are strictly circumscribed by the terms of the "arrangement," here the "Agreement Between the United States of America

---

* The "high seas" lie seaward of a nation's territorial sea, which is the band of water that extends up to three miles out from the coast. No nation may assert sovereignty over the high seas. *United States* v. *Williams,* 617 F.2d 1063, 1073 n.6 (5th Cir. 1980) (en banc) (quoting *United States* v. *Warren,* 578 F.2d 1058, 1064-1065 n.4 (5th Cir. 1978) (en banc), *cert. denied,* 446 U.S. 956, 100 S.Ct. 2928 (1980).

* The trial judge properly did not rely on 14 U.S.C. § 89(a) to justify the search of the MARGIE, concluding that the terms of the treaty govern. Section 89(a) does not authorize searches that violate international law. *See, e.g., United States* v. *Hensel,* 669 F.2d 18, 27 (1st Cir.), *cert. denied,* 103 S.Ct. 2431 (1983); international treaties supercede domestic law to the contrary, including the authority provided by § 89(a). *Also see United States* v. *Cadena,* 585 F.2d 1252, 1260 (5th Cir. 1978).

and the United Kingdom of Great Britain and Northern Ireland: Narcotic Drugs: Interdiction of Vessels" (A. 24a) (hereinafter the U.S./U.K. Agreement). That agreement plainly permits the boarding of a British vessel by United States authorities only if the vessel is within 150 miles of "the Atlantic coast of the United States" (A. 29a) and the United States authorities "reasonably believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States." (A. 28a.) The treaty also requires that "[a]ny action by the authorities of the United States shall be taken in accordance with United States law." (A. 29a.)

This petition presents two straightforward questions, one broadly framed and the other more narrowly framed, as to whether the terms of the U.S./U.K. Agreement were complied with in this case, by posing first the question of the proper definition of the coast of the United States for law enforcement purposes and second, more narrowly, in terms of the specific agreement at issue herein, what is the definition of the "Atlantic coast." These are questions of considerable importance, because the "coast" is the key measuring point for determining, for example, the extent of the territorial sea, the twelve mile limit, and the customs waters. Without absolute clarity as to the meaning of the "coast," measurements of proper jurisdiction will be disparate and confusing. It is a question of grave importance in a time when some foreign governments evince arbitrary, irrational and lawless efforts to define their own coasts and coastlines to enhance their territorial reach and may point to United States practice and jurisprudence in efforts to justify their actions.

A. *The Definition of the Atlantic Coast of the United States Employed by the Second Circuit Is Directly at Odds with Language in a Substantial Number of Decisions of this Court in Civil Cases.*

In *United States* v. *Maine*, ___ U.S. ___, 105 S.Ct. 992, 83 L.Ed.2d 998 (1985) this Court held that the "coast" or "coastline" is legally defined by reference to the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1607, T.I.A.S. No. 5639 (1964) as: "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." *Id.* at 998 (citing the Submerged Lands Act, 43 U.S.C. § 1312). *See also, United States* v. *Louisiana*, 394 U.S. 1, 11, 89 S.Ct. 768, 22 L.Ed.2d 36 (1969), *reh. denied*, 394 U.S. 994, *decree supplemented*, 394 U.S. 836 (1969). More specifically, this Court has determined that the coastline of Massachusetts excludes the island of Nantucket. *United States* v. *Maine* (*the Massachusetts Boundary Case*), 452 U.S. 429, 101 S.Ct. 3074, 69 L.Ed.2d 132 (1981). *Cf. United States* v. *California*, 381 U.S. 139, 85 S.Ct. 1401, 14 L.Ed.2d 296 (1965).

B. *Lower Court Decisions Interpreting Prior Anti-Smuggling Treaties (With Different Terms), Which Precede the Substantial Number of Supreme Court Decisions on the Subject Are Not Controlling in Defining the Coast.*

The Second Circuit's decision ignores the substantial body of recent Supreme Court precedent defining the coast, looking rather to "a variety of more relevant sources" (A. 8a) such as cases construing previous (and different) treaties between the United States and Great Britain and various international law treatises. Of considerable importance is the fact that the previous treaties between the United States and Great Britain set

forth in the cases on which the Second Circuit relies, include plain language referring to measurement "from the coast of the United States, its territories or possessions." (See A. 10a) and many of them turn on the question of measurement from an island territory. The agreement at issue in this case states only that the 150 mile limit is to be measured from "the Atlantic coast." For example, the islands swept into the definition of the coast in *Middleton* v. *United States*, 32 F.2d 239, 239-240 (5th Cir. 1929) (relied on by the Second Circuit, see A. 11a), were territorial islands within half a mile of the Florida Keys, and thus properly fit within the definition of U.S. territorial waters, which is a very different question and involves a different analysis.

In reaching its conclusion as to the definition of the coast, the Second Circuit relied on only one Supreme Court decision: *Ford* v. *United States*, 273 U.S. 593, 47 S.Ct. 531, 71 L.Ed. 793 (1927), where no issue was raised as to the proper definition of the coast. The trial and convictions in Ford resulted from the seizure of the British vessel QUADRA, hovering in the high seas off the Farallon Islands, *territory* of the United States, and 25 miles west from San Francisco. The seizure was made under the authority of the treaty between Great Britain and the United States of May 22, 1924 (43 Stat. 1761) as a convention to aid in the prevention of the smuggling of intoxicating liquors into the United States. The defendants in *Ford* were British subjects, as are the petitioners herein. The treaty language at issue in *Ford*, although in many respects similar to the treaty at issue herein, stated that "[t]he rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, *its territories* or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense . . ." (A. 10a) (emphasis added).

In further great contrast to this case, it was proved in *Ford* that the defendants there were conspiring and cooperating with

other persons who were within the United States. The conspiracy in that case was laid in the Bay of San Francisco, and there was evidence of attempts to land whiskey and other alcoholic beverages on several occasions. The QUADRA was accompanied by a loaded motorboat at the time of the seizure. The evidence showed plainly that the QUADRA when seized was 5.7 nautical miles from the Farallon Islands and the court meticulously applied the terms of the treaty agreement, i.e., carefully calculated the "treaty distance," in concluding that the evidence showed that said distance could have been traversed in less than an hour. Furthermore, unlike the instant case where the evidence of intent toward the United States consisted only of inference piled upon inference, the evidence in *Ford* showed that the captain of the QUADRA was constantly in touch with other defendants who were in San Francisco and acted to some extent under their orders and directions. The QUADRA was sailing up and down between the Farallones and the Golden Gate, exchanging liquor, picking up oil and offloading into small boats. "The evidence of the conspiracy, the landing of the liquor, and the complicity of the convicted defendants [those on the shore] was ample and practically undenied." In short, there were overt acts within the United States proved in *Ford*. Here jurisdiction rested only on a finding that there was intent to impact the United States, with no overt acts and no effects in the United States shown. The Second Circuit concluded that this inferential proof of intent supplied a sufficient nexus to afford objective territorial jurisdiction over the offenses charged.*

---

* The traditional definition of the objective territorial principle requires an actual effect on the United States before jurisdiction can attach to criminal acts. See "Harvard Research in International Law, Jurisdiction With Respect to Crime," 29 Am.J. Int'l L. 435, 484-485 (Supp. 1935); see also J. Brierly, *The Law of Nations*, 186 (3d ed. 1942). The district court in this case, however, rested on the reasoning of *United States* v. *Arra*, 630 F.2d 836 (1st Cir. 1980) that mere intent is sufficient to sustain jurisdiction.

In two other cases relied upon by the court below, *The Mazel Tov*, 51 F.2d 292 (D.R.I. 1931) and *The Golmaccam*, 8 F.Supp. 338 (D.Me. 1934) no issues were raised regarding the definition of the "coast," nor was any resolution of that issue necessary in either of those cases, as even measuring the distances from the nearest island, the courts found the governmental action involved not to be within the applicable laws or treaties.

None of the cases relied on by the Second Circuit appears to involve a foreign boat and foreign crew taken at such a great distance out on the high seas as the MARGIE. In *Ford* v. *United States*, *supra*, the boat was 25 miles west of San Francisco. In *The Miss C.B.*, 63 F.2d 639 (5th Cir. 1933), a British schooner was taken "eight miles from the nearest land, a small island, and a further distance from the shore of the mainland"; in *The Golmaccam*, 8 F.Supp. at 339, the boat was within 12 miles of "mount Desert Rock . . . about 20 miles from the island of Mount Desert" (which almost touches the coast of Maine); in *United States* v. *Henning*, 7 F.2d 488, 489 (S.D.Ala. 1925), the boat was 16 miles west of the coast of Florida) (A. 11a). The distance from the ordinary coast is significant in terms of international law. In P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction 456 (1927), quoted in 4 M. Whiteman, Digest of International Law 286 (1965), the author states that "where islands, or islets not continuously submerged at low tide, are situated *not more than six marine miles from*, and are the property of a littoral state, the normal boundary of territorial waters is extended by including those waters lying within 3 miles of the coasts or shores of such islands or islets. For islands or islets lying further from the mainland, a special zone is delimited around them . . ." (A. 12a). The Second Circuit, although citing this quotation, assumed that it supported the general proposition that islands are included in fixing the definition point of the coast.

C. *International Law Principles As to the Definition of the Territorial Sea or the Existence of a Territorial Sea Around an Island Are Not Relevant and Controlling Sources for a Definition of the Coast or the Atlantic Coast.*

Whether islands have their own territorial seas and coasts or coastlines is not dispositive or controlling in defining the Atlantic coast or the United States coast. The great bulk of international law relied on by the Second Circuit goes to support the proposition that islands may have independent territorial seas and coasts or coastlines, but such does not amount to a "consensus of authority concerning the role of islands in defining a nation's coast." (A. 16a.) Similarly, statements by British and American government officials to the effect that islands have their own coastlines and territorial seas (A. 14a-15a) are irrelevant to the questions raised by these petitioners. A determination that there is a zone of territorial sea of the United States (or any of the states) or any island is not the question.

The decision in this case below defines "the Atlantic coast of the United States" by measuring from the tip of an island (the southeast tip of Nantucket) some distance from the usual and ordinary coast as opposed to measuring from "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." *United States* v. *Maine, supra,* 105 S.Ct. at 998.

The Second Circuit distinguished all recent Supreme Court precedents defining the coast, by concluding that those precedents are applicable only to boundary disputes between states or submerged lands cases. However, in its definitions of "the coast," this Court has wisely stressed the "desirability of a single coastline for both the administration of the Submerged Lands Act *and the conduct of our future international relations*." *United States* v. *California, supra* at 165 (emphasis added).

It is significant that when Congress passed the Anti-Smuggling Act of 1935, 19 U.S.C. §§ 1701-1711 (1982) to correct the problem of foreign vessels hovering outside the twelve-mile limit, yet within one hour's sailing distance from the shore, it did so by defining "customs waters" as "twelve miles in the case of domestic or nontreaty foreign vessels [and] *treaty distance* . . . in the case of foreign treaty vessels." H.R. Rep. No. 868, 74th Cong., 1st Sess. 7 (1935); S. Rep. No.1036, 74th Cong., 1st Sess. 11 (1935), quoted in *United States* v. *Romero-Galue*, 757 F.2d 1147 (11th Cir. 1985) at 1153. The forty-foot sailboat at issue in this case is not and was not alleged to be a hovering "mothership," but it is subject to a proper determination of treaty distance. Without a clear definition of the "coast," there is no starting point to measure "treaty distance" and results may vary from case to case.

In *United States* v. *Romero-Galue*, 757 F.2d 1147 (11th Cir. 1985) the issue was raised whether Congress, in enacting 21 U.S.C. § 955a(c) intended to reach the possession of marijuana by foreigners aboard a foreign vessel on the high seas. The Eleventh Circuit therein used the terms "coast" and "coastline" as synonymous. 757 F.2d at 1151-1152. It also refers to the "twelve mile limit." But without a clear definition of "the coast," the "twelve mile limit" becomes imprecise and may vary from case to case and situation to situation.

In *United States* v. *Wright-Barker*, 784 F.2d 161 (3d Cir. 1986), the United States Coast Guard cutter Active stopped and boarded the Ida II, a coastal freighter of Panamanian registry, in the North Atlantic, approximately 200 miles east of the Jersey coast. No issue as to the definition of the coast or United States authority to board was raised therein. However, the Eleventh Circuit observed that "[s]imilar events confront law enforcement officials with some frequency, and therefore this case raises important questions concerning the jurisdiction of the United States courts to enforce federal narcotics

laws on the high seas . . ." *United States* v. *Wright-Barker*, 784 F.2d at 166.

D. *A Treaty/Agreement Is the Law of the Land and Its Terms Should Be Strictly Complied With; Thus a Definition of a Critical Term Will Serve the Defendants and Justice.*

It is a well-settled maxim of statutory and treaty interpretation that *Expressio unius est exclusio alterius* applies when in the natural association of ideas in the mind of the reader, that which is expressed is so set over by way of strong contrast to that which is omitted, that the contrast enforces the affirmative inferences that that which is omitted must be intended to have opposite and contrary treatment. The U.S./U.K. Agreement excludes language referring to territories and possessions of the United States and makes no mention of islands, or even other coasts. It specifically refers to the "Atlantic coast." At the point of boarding, the MARGIE was 141.5 miles from the southeastern tip of Nantucket Island and 159 miles from Chatham, Massachusetts, the nearest mainland (ordinary) coastal point. "If it is expected that a particular term would be defined in the body of a statute, but is not, then the word will be assumed to have its ordinary and popularly understood meaning." Sutherland, Statutory Construction, Section 47.07 (4th edition). The "Atlantic Coast" is not ordinarily or popularly understood as swinging in arcs around an island some distance from the mainland. The term "coast" as commonly used does not include islands off the coast.

An impermissible arbitrariness and uncertainty is guaranteed if law enforcement is permitted to "move the coast" for the sake of expediency in a given case. This Court has previously observed that "we cannot assume that, in enacting the Submerged Lands Act, Congress envisioned that the ownership of potentially vast resources might thereafter be determined

by the Coast Guard, acting solely in the interest of navigational convenience." *United States* v. *Louisiana, supra,* 394 U.S. at 11. Nor should it be assumed that jurisdiction over a foreign boat with a foreign crew under the careful delimitations of a treaty may be resolved by the Coast Guard's law enforcement convenience. The boarding of the MARGIE 159 miles from the Atlantic Coast and without the consent of the British government was a patent violation of the U.S./U.K. Agreement.

This is not a case involving a stateless vessel. There were no United States citizens aboard. The boarding was not for any sort of inspection purposes, but occurred expressly under the specific terms of an agreement aimed at contraband smugglers and at preventing problems and misunderstandings with another sovereign. The petitioners raise simple questions, easily resolved. How is the United States coast defined for law enforcement purposes? Is the jurisdictional reach of United States law enforcement generally measured from the normal and ordinary coastline or by swinging arcs around islands? Is the definition of the coast for law enforcement purposes "floating" depending on the need to justify a hasty and improper boarding? What does the term "Atlantic coast" in the agreement between the United States and the United Kingdom mean?

## Conclusion.

The questions herein are raised by three foreign nationals, the master and crew of the sailboat MARGIE, presently held in prisons of the United States, and are submitted respectfully in light of a substantial body of Supreme Court jurisprudence in civil cases which, if applied in this case, would render the boarding of their sailboat by the United States Coast Guard unlawful under the terms of the U.S./U.K. Agreement. Under

that reach within the meaning of the U.S./U.K. Agreement. Clarification of applicable terms and uniformity of rules with respect to boarding of foreign boats with foreign crews by United States authorities will serve defendants and justice.

For all the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH S. OTERI,
*Counsel of Record,*
JAMES W. LAWSON,
OTERI, WEINBERG & LAWSON,
75 Blossom Court,
Boston, Massachusetts 02114.
(617) 227-3700

## Appendix.

Opinion of United States Court of Appeals for the Second Circuit, April 28, 1986. 1a

Agreement on Narcotic Drugs: Interdiction of Vessels, Nov. 13, 1981, United States-Great Britain, T.I.A.S. No. 10296. 24a

# APPENDIX.

**UNITED STATES of America, Appellee,**
**v.**
**Patrick QUEMENER, Yann Raymond Boedec, Steven Seward, Defendants-Appellants.**

**Nos. 533, 534, 535 Docket 85-1273, 85-1284, 85-1297.**

United States Court of Appeals,
Second Circuit.
Argued Nov. 26, 1985.
Decided April 28, 1986.

. . . . . .

Richard A. Reeve, New Haven, Conn. (Federal Public Defender), for defendant-appellant Yann Boedec.

James W. Lawson, Boston, Mass. (Oteri, Weinberg & Lawson, Boston, Mass., of counsel), for defendant-appellant Steven Seward.

Thomas S. Luby, Meriden, Conn., for defendant-appellant Patrick Quemener.

Jeremiah F. Donovan, Asst. U.S. Atty. (Stanley A. Twardy, Jr., U.S. Atty., for the D. of Conn., of counsel, Jon J. Russo, Law Student Intern), for appellee.

Before MANSFIELD, PIERCE and MINER, Circuit Judges.

MINER, Circuit Judge:

Patrick Quemener, Yann Boedec and Steven Seward appeal from judgments of conviction entered in the United States Dis-

trict Court for the District of Connecticut (Clarie, J.) following a jury trial in which they were convicted of possessing and conspiring to possess marijuana with the intention of unlawfully importing it into the United States in violation of 21 U.S.C. §§ 955a(d), 955c. Appellants contend, *inter alia*, that Judge Clarie erred in denying their motions to suppress physical evidence and to dismiss the indictment for lack of jurisdiction. Finding no error, we affirm.

## I. BACKGROUND

On September 25, 1984, a Coast Guard patrol plane advised the Coast Guard vessel EVERGREEN that a forty-foot sailboat, later identified as the MARGIE, was heading north approximately 216 miles from the southeast tip of Nantucket Island and 236 miles from Chatham, Massachusetts. The EVERGREEN's patrol orders were to intercept vessels "heading in a general east to northeast direction, which appeared not to be fishing and were under 300 feet in length." Commander Gregory Shaw, the EVERGREEN's skipper, was suspicious of the MARGIE's northerly course, since most pleasure boats traveled down the coast toward the Caribbean in the fall. In fact, during the EVERGREEN's twelve-day patrol, no other pleasure vessels had been observed heading north except for a few boats sailing in Block Island Sound.

Commander Shaw first observed the MARGIE at about 4:15 p.m. from a distance of approximately 800 yards. He noted it to be heavily ladened and down in the bow and generally to be riding low in the water. This was unusual, since the MARGIE's bow was designed for living quarters and not for carrying heavy cargo. The MARGIE radioed the EVERGREEN, seeking technical advice concerning certain oil-line engineering problems. In response to an inquiry by Shaw, appellant Seward identified himself as the MARGIE'S Master.

He stated that he was a British citizen and that his home port was Rhode Bay, Anguilla, in the British West Indies.[1] He also advised Shaw that his last port of call had been Tortola and that his next port of call was to be St. John's, Newfoundland.[2] Commander Shaw then inquired as to the nationality of the MARGIE's crew. Seward replied that he thought they were French, but that he had not spoken to either of them very much during the nine days they had been sailing together. When Commander Shaw asked the purpose of the voyage, Seward claimed to be transporting the boat to St. John's, Newfoundland, for a friend who owned the boat; although he was not certain, Seward though[t] the boat had been sold and would be traveling from St. John's to Mystic, Connecticut.

Commander Shaw testified that his suspicions were aroused by the fact that Seward did not seem to know much about his crew members after making a nine-day voyage with them in a relatively small boat, that Seward was vague as to the details of the MARGIE's intended delivery, and that the MARGIE was approximately 70° off course for its claimed destination of Newfoundland.

---

[1] There is no dispute that the MARGIE was properly displaying her name and hailing port and flying the British flag.

[2] A communication from the EVERGREEN to the Atlantic Area Operations Commandant later that afternoon reported the MARGIE's destination as St. John's, *Canada*; a subsequent telex and the aircraft pilot's investigation report were to a similar effect. The EVERGREEN's radio operator testified that while he remembered saying St. John's, *Newfoundland*, he nonetheless recorded it as St. John's, *Canada*. The significance of these seemingly innocuous inconsistencies lies in an understanding of Canadian geography. The area known as St. John, lies approximately sixty miles north of Maine's Canadian border in the Province of New Brunswick; St. *John's*, on the other hand, lies approximately 1200 miles to the east, in the Province of Newfoundland. At the suppression hearing, appellants attempted to exploit this coincidence by arguing that their announced destination was in fact St. John, New Brunswick, a Canadian destination more compatible with their actual course, and one which would militate against a finding that the MARGIE was bound for United States waters.

At about 7:00 p.m. that evening, Shaw directed one of his officers, Lieutenant McPherson, to radio the MARGIE and obtain the full names, birthdates and addresses of all those aboard. When that information was provided, the EVERGREEN forwarded it to the El Paso Criminal Intelligence Center ("EPIC"). The EPIC check proved negative as to the MARGIE itself and appellants Boedec and Quemener; Seward, however, was reported to have been involved in cocaine smuggling in the Caribbean in early 1984 using a vessel similar to the MARGIE.

Later that evening, Shaw requested permission from the Atlantic Area Operations Commandant to board the MARGIE if she came within 150 miles of the Atlantic coast of the United States. The EVERGREEN continued to follow the MARGIE at a distance of between 700 and 1000 yards throughout the night. The MARGIE continued to bear closer to the mainland on a course which, according to Shaw, eventually would have put her along the Gulf of Maine. At approximately 11:40 a.m. on September 26th, the EVERGREEN received authorization from the Atlantic Area Operations Center to board the MARGIE. The boarding was accomplished without incident at approximately 12:00 noon. At that point, the MARGIE was located approximately 141.5 miles from the southeast tip of Nantucket Island, and 159 miles from Chatham, Massachusetts, the nearest mainland coastal point.

On boarding, Lieutenant McPherson detected the aroma of marijuana. As McPherson entered the cockpit, he observed a number of burlap-covered bales. A field test indicated that the bales contained marijuana. In all, 180 bales were discovered, each weighing between forty and fifty pounds. The MARGIE was then seized and its crew arrested.

A search of the vessel revealed some minimal provisions as well as a large number of navigational charts. Specifically, the MARGIE possessed detailed coastal charts for Cape Hatteras

to Charlestown, Cape Canaveral to Key West, the east coasts of Florida and South Carolina, Charlestown Light to Cape Canaveral, the Leeward Islands, the West Indies, the Dominican Republic, the Virgin Islands, Jamaica, the Passage to Mona and the Gulf of Mexico and Tortola. She also possessed detailed coastal charts for Block Island Sound and eastern and mid-Long Island Sound. While there were no detailed coastal charts for any area north of Cape Cod, there were two charts showing Canadian points; one was a general chart showing St. John's, Newfoundland, but covering the immense area from Newfoundland in the north to Surinam, off South America, to the south. That chart also depicted the coasts of North and South America to the west and the coasts of Europe and Africa to the east. The second chart was also a rather general one, showing St. John, New Brunswick, covering the area between Nova Scotia to the north and Cape Hatteras, off North Carolina, to the south. Coast Guard personnel testified that these were not the type of charts that a prudent mariner would use for navigating in coastal waters, since "there is not enough definition on the charts . . . to do an accurate positioning, a fixing along the beach, or to pick out the particular dangers to navigation, rocks in the water, shoal areas." A defense expert testified, however, that, in his opinion, a sailor would have been able to sail from Tortola to Canada using the charts found aboard the MARGIE.

All of this evidence was admitted at trial, in addition to certain expert navigational testimony. The government's expert testified, and the defense expert agreed, that if the MARGIE maintained the heading she was on and the speed she was making when first spotted by the Coast Guard plane, she would have reached land in the United States. The defense expert, however, also testified that if one considered instead the MARGIE's course between the first sighting by the plane and the second sighting an hour and one-half later, she was heading toward the Canadian peninsula of Nova Scotia.

## II. DISCUSSION

### A. *The Suppression Motion*

[1] Appellants' principal argument on appeal is that the district court erred in denying their motion to suppress the evidence seized when the MARGIE was boarded. The predicate for this contention is severalfold. First, appellants claim that the seizure of the MARGIE occurred more than 150 miles off the Atlantic coast of the United States, in violation of an agreement between the United States and Great Britain. The agreement provides that the British government

> will not object to the boarding by the authorities of the United States, outside the limits of the territorial sea and contiguous zone of the United States and within the areas described in paragraph 9 below, of private vessels under the British flag in any case in which those authorities reasonably believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States.

Agreement on Narcotic Drugs: Interdiction of Vessels, Nov. 13, 1981, United States-Great Britain, T.I.A.S. No. 10296, at 2 ("USGB Agreement" or "Agreement"). Paragraph 9 of the Agreement defines the agreed upon areas to "comprise the Gulf of Mexico, the Caribbean Sea, that portion of the Atlantic Ocean West of longitude 55° West and South of latitude 30° North and all other areas within 150 miles of the Atlantic coast of the United States." *Id.* at 3.

There is no dispute that the MARGIE was seized 141.5 miles from the southeastern tip of Nantucket Island and 159 miles from Chatham, Massachusetts, the nearest mainland point. The question presented by this aspect of the appeal,

therefore, is: from which point is the 150 miles limitation to be measured?

In arguing that the coast must be measured from the Massachusetts mainland, appellants rely on a substantial body of Supreme Court case law, *e.g.*, *United States v. Maine*, ___ U.S. ___, 105 S.Ct. 992, 83 L.Ed.2d 998 (1985); *United States v. Maine*, 452 U.S. 429, 101 S.Ct. 3074, 69 L.Ed.2d 132 (1981); *United States v. Louisiana*, 394 U.S. 1, 89 S.Ct. 768, 22 L.Ed.2d 36 (1969); *United States v. California*, 381 U.S. 139, 85 S.Ct. 1401, 14 L.Ed.2d 296 (1965), holding that a coastal state's seaward boundary generally is set as a line three geographical miles distant from its coastline. *United States v. Maine*, 105 S.Ct. at 998 (citing the Submerged Lands Act, 43 U.S.C. § 1312). "Coastline," in turn, is defined as "'the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.'" 105 S.Ct. at 998 (quoting 43 U.S.C. § 1301(c)). According to appellants, these cases require that Nantucket be excluded in deriving the United States coast.

We find those cases inapposite however, and therefore disagree. First, as noted by the district court, these boundary cases deal exclusively with determining coastal states' ownership of the natural resources off their littoral borders vis-á-vis the federal government. Accordingly, in each of the cases, the Supreme Court purported to do no more than define the coastlines of the *states* involved; no attempt was made to fix the boundaries of the *Atlantic coast of the United States*.[3]

---

[3] In cases not involving competing claims of resource ownership between states and the federal government, lower courts have defined state boundaries to include areas embraced by a state's own territorial sea. *See Civil Aeronautics Board v. Island Airlines, Inc.*, 235 F.Supp. 990, 1007 (D.Hawaii 1964), *aff'd*, 352 F.2d 735 (9th Cir. 1965); *Ex parte Marincovich*, 48 Cal.App. 474, 192 P. 156 (Cal. Dist. Ct. App. 1920).

More important, however, while these cases focused on a definition of the term "coastline," we are concerned with the USGB Agreement's usage of the less specific "coast." A number of sources confirm the fact that "coast" denotes a far more general meaning than the term of art "coastline." *See, e.g., Mahar v. Gartland S.S. Co.*, 154 F.2d 621, 622 (2d Cir. 1946) ("A country's 'coast' ordinarily means those of its borders washed by the sea . . ."); Blacks Law Dictionary 232 (5th ed. 1979) ("the edge or margin of a country bounding on the sea. The term includes small islands and reefs naturally connected with the adjacent land, and rising above the surface of the water. . . ."); Random House College Dictionary 257 (rev. ed. 1980) (the land or region next to the sea; seashore); Webster's Third New International Dictionary 433 (1981) (definition 2a: "the seashore or land near it; the margin: seaboard: the land immediately abutting the sea. . . ."). We therefore are persuaded that the Supreme Court boundary cases cited are not dispositive with regard to a definition of the Atlantic coast.

Instead, we look to a variety of more relevant sources to support our conclusion that the MARGIE was seized within 150 miles of the Atlantic coast of the United States. First, it appears to be a widely accepted tenet of international jurisprudence that a nation's coast is considered to include, in some cases, to be extended by, any of its territorial islands. For example, in the case of *The "Anna,"* 165 Eng. Rep. 809 (1805), the British High Court of Admiralty determined that the capture of an American ship by a British privateer, within three miles of certain mud islands at the mouth of the Mississippi River but five miles from the mainland, was made within the territorial waters of the United States. The court wrote:

> [I]t so happens in this case, that a question arises as to what is to be deemed the shore, since there are a number of

> little mud islands composed of earth and trees drifted down by the river, which form a kind of portico to the mainland. It is contended that these are not to be considered as any part of the territory of America, that they are a sort of "*no man's land*," not of consistency enough to support the purposes of life, uninhabited, and resorted to, only, for shooting and taking birds' nests. It is argued that the line of territory is to be taken only from the Balise, which is a fort raised on made land by the former Spanish possessors. I am of a different opinion; I think that the protection of territory is to be reckoned from these islands; and that they are the natural appendages of the coast on which they border, and from which indeed they are formed. Their elements are derived immediately from the territory, and on the principle of alluvium and increment, on which so much is to be found in the books of law.

*Id.* at 814-15. Similar conclusions have been reached by a number of American courts. *See Ford v. United States*, 273 U.S. 593, 601, 47 S.Ct. 531, 533, 71 L.Ed. 793 (1927); *The Miss C.B.*, 63 F.2d 639, 639 (5th Cir. 1933); *The Golmaccam*, 8 F.Supp. 338, 339 (D.Me. 1934); *The Mazel Tov*, 51 F.2d 292, 294 (D.R.I. 1931), *rev'd on other grounds*, 56 F.2d 921 (1st Cir. 1932), *rev'd sub nom. Cook v. United States*, 288 U.S. 102, 53 S.Ct. 305, 77 L.Ed. 641 (1933); *United States v. Henning*, 7 F.2d 488, 489 (S.D.Ala. 1925), *rev'd on other grounds sub nom. Hennings v. United States*, 13 F.2d 74 (5th Cir. 1926).

Of particular significance is the fact that each of these cases was decided against the backdrop of a treaty between the United States and Great Britain similar to the Agreement at issue here. *See* Convention for Prevention of Smuggling of Intoxicating Liquors, Jan. 23, 1924, United States-Great Britain,

43 Stat. 1761, T.S. No. 685. Aimed at "avoiding any difficulties which might arise between [the two nations] in connection with the laws in force in the United States on the subject of alcoholic beverages. . . . ," *id.*, Preamble, that treaty provided, in relevant part, as follows:

ARTICLE I.

The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coastline outwards and measured from low-water mark constitute the proper limits of territorial waters.

ARTICLE II.

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

* * * * * * * *

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States its territories or possessions than can be traversed

> in one hour by the vessel suspected of endeavoring to commit the offense. . . .

*Id. at 1761-62.*

In applying that treaty, the courts uniformly have measured the one-hour distance from the coast of any relevant offshore island. *Ford v. United States,* 273 U.S. at 600-01, 47 S.Ct. at 533 (seizure of British vessel within 12 miles of the Faralon Islands, 25 miles west of San Francisco); *The Miss C.B.*, 63 F.2d at 639 (seizure of British schooner "eight miles from the nearest land, a small island, and a further distance from the shore of the mainland"); *The Golmaccam,* 8 F.Supp. at 339 (seizure of British vessel within 12 miles of "Mount Desert Rock, the nearest part of the coast [of Maine]; being a rocky peak just reaching the surface of the ocean, on which there is a lighthouse, about 20 miles from the island of Mount Desert"); *The Mazel Tov,* 51 F.2d at 294 (British vessel seized 11-½ miles from a "small island, 'No Man's Land,' lying some distance at sea off the island of Martha's Vineyard"); *United States v. Henning,* 7 F.2d at 489 (British vessel seized "12 miles west of Sea Horse Reef beacon on the west coast of Florida and about 16 miles west of the coast of Florida; seizure upheld but based upon distance "'from the coast of the United States, the coast of its territories, or the coast of its possessions,'" and not from the beacon).

In other contexts as well, American courts have determined the United States coast to encompass the area surrounding territorial islands. *Middleton v. United States,* 32 F.2d 239, 239-40 (5th Cir. 1929) (affirming conviction for bringing aliens into the United States; defendant brought aliens into U.S. territorial waters "when he came within half a mile of the Keys, and also when he passed by the bell buoy of the Northwest Channel within three miles of an island. It does not make any difference that these islands were uninhabited; it is suf-

ficient that they were islands of the United States."); *cf. Civil Aeronautics Board v. Island Airlines, Inc.*, 235 F.Supp. 990, 1007 (D.Hawaii 1964) (state boundaries fixed "at three nautical miles from the line of ordinary low water surrounding each and every one of the islands composing the State of Hawaii[,]" giving to Hawaii "jurisdiction over the surrounding ocean waters no greater nor less than that given to every other state of the Union bordering upon the sea"), *aff'd*, 352 F.2d 735 (9th Cir. 1965); *Ex parte Marincovich*, 48 Cal.App. 474, 192 P. 156, 158 (Cal.Dist.Ct.App. 1920) ("we conclude . . . that . . . the state [of California] has jurisdiction over a belt of water, three miles wide, around each of the islands that lie along and adjacent to our shores").

The conclusions of these courts are in accord with the vast body of other authorities. *E.g.*, H. Wheaton, *Elements of International Law* 256 (8th ed. 1866), *quoted in United States v. Louisiana*, 394 U.S. 11, 65 n.84, 89 S.Ct. 773, 802 n.84, 22 L.Ed.2d 44 (1969) ("[t]he term 'coasts' includes the natural appendages of the territory which arise out of the water, although these islands are not of sufficient firmness to be inhabited or forfeited. . . ."); P. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* 456 (1927), *quoted in* 4 M. Whiteman, *Digest of International Law* 286 (1965) ("where islands, or islets not continuously submerged at low tide, are situated not more than six marine miles from, and are the property of a littoral state, the normal boundary of territorial waters is extended by including those waters lying within 3 miles of the coasts or shores of such islands or islets. For islands or islets lying further from the mainland, a special zone is delimited around them. . . ."); Fauchille, *Traite de Droit International Public*, pt. II, at 202 (8th ed. 1925), *cited in* Whiteman, *supra*, at 285; III Gidel, *Le Droit International Public de la Mer* 684, 717 (1934), *cited in* Whiteman, *supra*, at 285.

Moreover, a number of statements by both British and American government officials supports this precise view. For example, in a 1964 letter to Attorney General Kennedy, Secretary of State Rusk wrote:

> It is the traditional position of the United States that its territorial sea is three nautical miles in breadth measured from low water mark on its coasts. An island has its own territorial sea measured from the same baseline. It is, therefore, the Department's position that each of the islands of the Hawaiian archipelago has its own territorial sea, three miles in breadth measured from low water mark on the coast of the island. . . .

Letter from Secretary of State Rusk to Attorney General Kennedy (May 21, 1964) (Department of State, file Av 6 US/IA), *quoted in* Whiteman, *supra,* at 281; *see also* 1 Moore, *International Law Digest* 711, 713 (1906), *quoted in* Whiteman, *supra,* at 274 (similar statement by Secretary of State Seward regarding Spain's six-mile territorial water claim in regard to Cuba). Similarly, a 1959 Department of State Bulletin authored by a Department Geographer noted that:

> Islands have their own territorial seas, which may or may not coalesce with the territorial sea of the mainland. . . . Islands within 6 miles of each other have territorial seas which of necessity overlap and in steppingstone fashion may extend the sovereignty of the state over distances far beyond the mainland coast. This situation is true off the coast of Massachusetts, where the territorial sea of Martha's Vineyard coalesces with that of the mainland as well as with that of Nantucket Island. As a result territorial waters extend some 30 miles seaward from the Massachusetts coast opposite Martha's Vineyard. . . .

Pearcy, *Measurement of the U.S. Territorial Sea*, 40 Dep't St. Bull. 963, 965-66 (June 29, 1959), *quoted in* Whiteman, *supra*, at 281-82; *see also* L. Meeker, *Territorial Waters of Former Japanese Mandated Islands* (Jan. 2, 1947) (Department of State Memorandum, file 894.0145/1-247), *quoted in* Whiteman, *supra*, at 281. Finally, the report of the Special Master appointed following the decision in *United States v. California*, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 (1947) notes:

> The letter from the Secretary of State of November 13, 1951, says . . . that at The Hague Conference of 1930 the United States took the position that each off-shore island was to be surrounded by its own belt of territorial waters, and that this principle was approved in the Report of the Second Sub-Committee. . . . That each offshore island should have its own three-mile belt goes naturally with the fact that these islands are part of the territory of the nation to which the mainland belongs. No one, for instance, questions that the islands lying off the southern coast of California are part of the State of California, and as such each of them is, of course, entitled to its three mile marginal strip. . . .

*Submerged Lands, 1952: Hearing on S.J. Res. 13 Before the Committee on Interior and Insular Affairs*, 83d Cong., 1st Sess. 1211, 1221 (1952), *quoted in* Whiteman, *supra*, 293-94.

The British authorities have expressed similar views. For example, in 1869, the British Law Officers sent the following instructions to the Governor of the Bahamas:

> The Cays on the north coast of Cuba . . . appear to us to come within the principle laid down by Lord Stowell in the case of the *Anna* . . ., and that the Spanish right of

> jurisdiction extends to a distance of a marine league seawards from those Cays, and over all the Banks which may be enclosed within those Cays and the Mainland of Cuba.

2 H.A. Smith, *Great Britain and the Law of Nations* 240 (1935), *quoted in* Whiteman, *supra*, at 274. Similar instructions were offered by the British Law Officers with respect to the islands of Bermuda, 2 H.A. Smith at 232-33, *quoted in* Whitman, *supra*, at 275, and Jamaica, 2 H.A. Smith at 239, *quoted in* Whiteman, *supra*, at 275, as well as the Great Barrier Reef at Queensland, Australia, Whiteman, *supra*, at 278-79.

Finally, this position is supported by reference to a number of international treaties. Most significant, the Convention on the Territorial Sea and the Contiguous Zone, which appellants point to as providing the source for a definition of "coastline," specifically confirms that islands possess independent coasts or coastlines. *See* Convention on the Territorial Sea and the Contiguous Zone, *done* April 29, 1958, art. 10, 15 U.S.T. 1606, T.I.A.S. No. 5639 ("1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide. 2. The territorial Sea of an island is measured in accordance with the provisions of these articles."); *see also, e.g.*, Whiteman, *supra*, at 276-77 ("Article II of the Treaty between Great Britain and Denmark of 1902 regulating the fisheries around the Faroe Islands, stated that the Danes should enjoy exclusive fishing rights '. . . within the distance of 3 miles from low-water mark along the whole extent of the coast of the said islands, as well as of the dependent islets, rocks and banks.'"); *id.* at 277 ("The North Sea Convention of 1882 in article 2 stated that the fishing line should be measured from the 'low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.'"); *cf.* Whiteman, *supra*, at 293 ("The Report of

the Second Commission (Territorial Waters) at the Hague Conference of 1930 for the Codification of International Law included the following draft of a provision . . . with reference to 'Islands': 'Every island has its own territorial seas. . . .' "); *id.* at 294 ("The text evolved by the International Law Commission with respect to islands (article 10), and contained in its 1956 and final report, . . . read: 'Every island has its own territorial sea.' ").

In light of this overwhelming consensus of authority concerning the role of islands in defining a nation's coast, we have little difficulty concluding that the USGB Agreement clearly contemplates a 150 mile delimitation measured in this case from the coast of Nantucket itself. Accordingly, because the seizure of the MARGIE occurred within 150 miles of that point, we find no violation of this aspect of the two nations' Agreement.

We also conclude, as discussed more fully below, that the decision to board and seize the MARGIE was supported by a reasonable belief that the vessel had on board a cargo of drugs for importation into the United States, as required by the Agreement. Accordingly, we find no violation of the Agreement's terms and conclude that the district court properly denied appellant's motion to suppress on this basis.

[2] Appellants also contend that the evidence seized on board the MARGIE should have been suppressed because the boarding of the MARGIE violated the Convention on the High Seas, *done* April 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200 (entered into force Sept. 30, 1962). That treaty, to which both the United States and Great Britain are parties, provides that "[s]hips shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles shall be subject to its exclusive jurisdiction on the high seas. *Id.* art. 6. Article 22 of the treaty provides that "[e]xcept where acts of interference derive from powers conferred by treaty, a warship which encounters a

foreign merchant ship on the high seas is not justified in boarding her [except in certain circumstances not here applicable]." The district court found that the USGB Agreement effected a bilateral modification of the Convention and that there was, therefore, no violation of the Convention's terms. In our view, the issue of the violation *vel non* of the Convention is easily resolved without resort to a modification analysis.[4] It is clear that under articles 6 and 22, an applicable treaty may sanction and thereby legitimize conduct otherwise proscribed by the Convention. The Agreement here, providing that Great Britain will "not object to the boarding by the authorities of the United States, outside the limits of the territorial sea and contiguous zone of the United States . . . of private vessels under the British

---

[4] We nonetheless would agree with the district court's modification analysis, and reject appellants' contention that the informal exchange of letters between Great Britain and the United States was insufficient to modify the terms of a formally ratified multilateral convention. In particular, we disagree with appellants' suggestion that modification could only be effected in accordance with the express provisions of article 35 of the Convention. That article deals only with modification of the Convention in toto; that is, it sets forth the mechanism by which multilateral modification may be accomplished. It does not, however, eliminate the possibility of bilateral modification. Indeed, article 22 of the Convention proscribes the boarding of foreign merchant ships by warships "[e]*xcept where acts of interference derive from powers conferred by treaty*. . . ." (emphasis added). We have no reason to believe that that provision does not embody treaties entered into subsequent to the effective date of the Convention. Similarly, article 6 provides that ships sailing under the flag of a state shall be subject to that state's exclusive jurisdiction *except* in cases "expressly provided for in international treaties. . . ." Moreover, the availability of an informal mechanism for modification is confirmed by those cases holding that a nation may waive its rights under the Convention and consent to a boarding of its vessels on the high seas. *E.g., United States v. Green*, 671 F.2d 46, 50-51 (1st Cir.) (collecting cases), *cert. denied*, 457 U.S. 1135, 102 S.Ct. 2962, 73 L.Ed.2d 1352 (1982); *United States v. Williams*, 617 F.2d 1063, 1089-90 (5th Cir. 1980) (en banc); *see United States v. Marsh*, 747 F.2d 7, 9 (1st Cir. 1984). Certainly, if the Convention's protections may be waived by consent in any single situation, a waiver also may be found where a nation agrees in advance not to object to a specified type of boarding.

flag . . .," plainly brings the boarding of the MARGIE within the Convention's recognized exceptions. Accordingly, we conclude that the Coast Guard's actions did not violate the Convention on the High Seas.

In light of the foregoing, it is unnecessary to reach the issue whether appellants would have standing to seek suppression of evidence seized in violation of international treaties or agreements. *See, e.g., United States v. Green,* 671 F.2d 46, 50 (1st Cir.), *cert. denied,* 457 U.S. 1135, 102 S.Ct. 2962, 73 L.Ed.2d 1352 (1982); *United States v. Williams,* 617 F.2d 1063, 1089-90 (5th Cir. 1980) (en banc); *United States v. Postal,* 589 F.2d 862, 873-84 (5th Cir.), *cert. denied,* 444 U.S. 832, 100 S.Ct. 61, 62 L.Ed.2d 40 (1979); *United States v. Cadena,* 585 F.2d 1252, 1259-61 (5th Cir. 1978).

[3] Appellants' final contention with respect to the suppression issue is that the boarding and search of the MARGIE violated their fourth amendment rights. In particular, they argue that the seizure and subsequent search of the MARGIE was not supported by probable cause. We disagree. First, we note that because the Coast Guard's stopping and boarding of the MARGIE did not amount to an arrest of the defendants, probable cause was not required. *United States v. Pinto-Mejia,* 720 F.2d 248, 262 (2d Cir. 1983), *modified on other grounds,* 728 F.2d 142 (2d Cir. 1984); *United States v. Streifel,* 665 F.2d 414, 421 (2d Cir. 1981). Instead, because the stopping and boarding constituted an investigatory stop, such action was proper if the Coast Guard officers were "'aware of specific articulable facts, together with rational inferences from those facts that reasonably warrant[ed] suspicion that the [defendants were, or were] about to be engaged in criminal activity." *Streifel,* 665 F.2d at 421 (quoting *United States v. Brigmoni-Ponce,* 422 U.S. 873, 884, 95 S.Ct. 2574, 2581, 45 L.Ed.2d 607 (1975)). In assessing the reasonableness of a law enforcement officer's suspicions, the totality of the circumstances must

be considered, *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 694, 66 L.Ed.2d 621 (1981), and "due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 1883, 20 L.Ed.2d 889 (1968).

Applying those standards to the facts of this case, it is clear that the Coast Guard officers had reasonable, articulable factual grounds for suspecting that the MARGIE was engaged in smuggling drugs into the United States. First, Commander Shaw, an officer of sixteen years' Coast Guard experience, reasonably was suspicious that a pleasure craft like the MARGIE was headed north at a time of year when similar crafts almost invariably headed south. Indeed, on its September patrol, the EVERGREEN had not observed a single pleasure boat traveling north, with the exception of a few close to shore in the vicinity of Block Island Sound. Second, the MARGIE was plowing through the water, low in the bow, as if she carried a heavy cargo, an unusual phenomenon for a pleasure boat. Third, although some of the Coast Guard records reveal confusion as to the MARGIE's claimed destination, *see supra* note 2, there is no real dispute that Commander Shaw was first informed by defendant Seward that the MARGIE was headed for St. John's Newfoundland. As the district court found, the purported destination seemingly was inconsistent with the MARGIE's actual course, which would have placed her somewhere in the Gulf of Maine. Fourth, Commander Shaw was understandably suspicious that Seward was uncertain as to the identity and nationality of his crew members, particularly since the three had shared quarters on the small boat for at least nine days. Finally, the EPIC check on defendant Seward revealed that he had been involved in an attempted cocaine smuggling operation earlier in the year somewhere in the British West Indies or the British Virgin Islands.

**[4, 5]** We have no difficulty concluding that the totality of these circumstances provided an ample basis to justify the Coast Guard's boarding. The subsequent search of the MARGIE also was justified by an additional factor which became apparent in the course of the boarding. Specifically, as the EVERGREEN approached the MARGIE, Lieutenant McPherson smelled the distinct odor of bulk marijuana. Accordingly, we hold that appellants' fourth amendment rights were not violated and that the district court correctly denied suppression on this basis.

**[6]** Having determined that the boarding complained of was supported by a reasonable and articulable suspicion, and therefore comported with the strictures of the fourth amendment, we address appellants' claim that the seizure nonetheless violated the USGB Agreement. In advancing this claim, appellants focus on the following language contained in the Agreement: "The Government of the United Kingdom of Great Britain and Northern Ireland agree that they will not object to the boarding by the authorities of the United States . . . of private vessels under the British flag in any case in which those authorities *reasonably believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States*." (emphasis added). We need not address appellants' unsupported contention that the "reasonable belief" language embodies a greater standard than the "reasonable suspicion" standard we concluded was satisfied in this case; even were we to view the reasonable belief standard as imposing an enhanced burden on the suspicions of law enforcement officials, we would find that burden satisfied here, since it fairly may be said that the evidence available to the Coast Guard officers was sufficient to provide substantially more than reasonable suspicion.

**[7]** We also reject appellants' claim that there was insufficient evidence to support a reasonable belief that the MARGIE's

cargo of marijuana was bound for the United States in violation of United States law, since we see no reason to question the correctness of the district court's factual finding that the MARGIE's apparent course would have placed her somewhere in the Gulf of Maine.

B. *Jurisdiction*

Appellants' only other argument of substance is that the proof at trial failed to establish an intent to enter the United States and that therefore jurisdiction over the charged offenses was lacking.

[8] The statute under which appellants were convicted, 21 U.S.C. §§ 955a(d), 955c, makes it unlawful for any person to possess a controlled substance intending that it be unlawfully imported into the United States. These provisions apply to citizens of any country, acting anywhere in the world, as long as there is an intent to import the controlled substance into the United States. Indeed, the statute itself unambiguously provides that these sections are "intended to reach acts of possession . . . committed outside the territorial jurisdiction of the United States." 21 U.S.C. § 955a(h); *see also Pinto-Mejia*, 720 F.2d at 259. There simply is no merit to appellants' claim that their prosecution for these offenses violates international law. As we noted in *Pinto-Mejia*, "Congress is not bound by international law. If it chooses to do so, it may legislate with respect to conduct outside the United States, in excess of the limits posed by international law. As long as Congress has expressly indicated its intent to reach such conduct, 'a United States court would be bound to follow the Congressional direction unless this would violate the due process clause of the Fifth Amendment.'" *Id.* (quoting *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1334 (2d Cir. 1972)); *see also United States v. Allen*, 760 F.2d 447, 454 (2d Cir. 1985).

**[9]** Even absent that specific statutory authorization, an "intent to cause effects within the United States also makes it reasonable to apply to persons outside United States territory a statute which is not expressly extraterritorial in scope." *United States v. Muench*, 694 F.2d 28, 33 (2d Cir. 1982), *cert. denied*, 461 U.S. 908, 103 S.Ct. 1881, 76 L.Ed.2d 811 (1983); *see also United States v. Orozco-Prada*, 732 F.2d 1076, 1088 (2d Cir.), *cert. denied*, ___ U.S. ___, 105 S.Ct. 154, 83 L.Ed.2d 92 (1984). We have no difficulty concluding that the evidence adduced at trial sufficiently established the requisite intent to import the marijuana into the United States, and thereby satisfied the nexus requirement of the objective principle of territorial jurisdiction. *See Pinto-Mejia*, 720 F.2d at 261 ("international law requires the state seeking to assert jurisdiction to show a nexus between it and the foreign vessel that is sufficient to justify supplanting the flag state's normally 'exclusive jurisdiction'. . . ."); *United States v. Marino-Garcia*, 679 F.2d 1373, 1380-81 & n.13 (11th Cir. 1982) (objective principle satisfied by intent to cause an effect within the United States), *cert. denied*, 459 U.S. 1114, 103 S.Ct 748, 74 L.Ed.2d 967 (1983); *United States v. Baker*, 609 F.2d 134, 138-39 (5th Cir. 1980) (same); Restatement (Second) of Foreign Relations Law of the United States § 18 comment i (1965) ("The jurisdiction of a state under the rule stated in this Section is not limited to jurisdiction to prescribe a rule punishing or redressing the conduct after it has happened. It includes jurisdiction to prescribe a rule preventing conduct which would have the effects bringing it within the rule stated in this Section.").

**[10]** The evidence available to the jury, viewed most favorably to the government, *Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942), included the following: the MARGIE carried a large number of detailed coastal maps for the east coast of the United States and the

Caribbean Islands, but no detailed charts for any area north of Cape Cod; although the MARGIE carried a tide table for the east coast of the United States, she had no similar table of Canadian tides; as discussed above, contrary to the MARGIE's announced St. John's, Newfoundland, course, she appeared to be heading for some spot along the United States coast. Indeed, as the EVERGREEN followed the MARGIE, the latter continued to come closer to Nantucket. The jury quite reasonably could infer a United States destination from that fact, especially since the MARGIE was low on provisions and would normally have been expected, in light of her cargo, to sail as far from the United States coast as possible. On balance, we cannot say that the evidence was insufficient to establish the requisite intent to land the cargo in the United States. Accordingly, we reject appellants' claim that jurisdiction over the offenses was lacking.

## III. CONCLUSION

Appellants have raised a number of other claims, all of which we have examined and found to be without merit. Accordingly, the judgments of conviction are affirmed.

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 10296

# NARCOTIC DRUGS

## Interdiction of Vessels

Agreement Between the
UNITED STATES OF AMERICA
and the UNITED KINGDOM OF
GREAT BRITAIN and NORTHERN IRELAND

Effected by Exchange of Notes
Signed at London November 13, 1981

*with*

Related Letter

## NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113) —

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

*For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402*

# GREAT BRITAIN AND NORTHERN IRELAND

## Narcotic Drugs: Interdiction of Vessels

*Agreement effected by exchange of notes*
*Signed at London November 13, 1981;*
*Entered into force November 13, 1981.*
*With related letter.*

*The British Secretary of State for Foreign and Commonwealth Affairs to the American Ambassador*

Foreign and Commonwealth Office
London SW1A 2AH

His Excellency
The Honourable
John J. Louis Jr.
Embassy of the
United States of America
Grosvenor Square
London W1A 1AE

13 November 1981

Your Excellency,

I have the honour to refer to the recent discussions between representatives of our two Governments concerning the desire of the authorities of the United States to take more effective measures to suppress the unlawful importation of cannabis and other narcotic drugs into the United States.

Bearing in mind the special nature of this problem and having regard to the need for international co-operation in suppressing the illicit traffic in narcotic drugs, which is recognised in the Single Convention on Narcotic Drugs of 1961, [1] I have the honour to propose the following:

1. The Government of the United Kingdom of Great Britain and Northern Ireland agree that they will not object to the boarding by the authorities of the United States, outside the limits of the territorial sea and contiguous zone of the United States and within the areas described in paragraph 9 below, of private vessels under the British flag in any case in which

[1] Done Mar. 30, 1961, TIAS 6298; 18 UST 1407.

those authorities reasonably believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States.

2. On boarding the vessel the authorities of the United States may address enquiries to those on board, examine the ship's papers and take such other measures as are necessary to establish the place of registration of the vessel. When these measures suggest that an offence against the laws of the United States relative to the importation of narcotic drugs is being committed, the Government of the United Kingdom agree that they will not object to the authorities of the United States instituting a search of the vessel.

3. If the authorities of the United States then believe that an offence against the laws referred to in paragraph 2 above is being committed, the Government of the United Kingdom agree that they will not object to the vessel being seized and taken into a United States port.

4. The Government of the United Kingdom may, within 14 days of the vessel's entry into port, object to the continued exercise of United States jurisdiction over the vessel for purposes of the laws referred to in paragraph 2 above, and the Government of the United States shall thereupon release the vessel without charge. The Government of the United States shall not institute forfeiture proceedings before the end of the period allowed for objection.

5. The Government of the United Kingdom may, within 30 days of the vessel's entry into port, object to the prosecution of any United Kingdom national found on board the vessel, and the Government of the United States shall thereupon release such person. The Government of the United Kingdom agree that they will not otherwise object to the prosecution of any person found on board the vessel.

6. Any action by the authorities of the United States shall be taken in accordance with this Agreement and United States law.

7. In any case where a vessel under the British flag is boarded the authorities of the United States shall promptly inform the authorities of the United Kingdom of the action taken and shall keep them fully informed of any subsequent developments.

8. If any loss or injury is suffered as a result of any action taken by the United States in contravention of these arrangements or any improper or unreasonable action taken by the United States pursuant thereto, representatives of the two Governments shall meet at the request of either to decide any question relating to compensation. Representatives of the two Governments shall in any case meet from time to time to review the working of these arrangements.

9. The areas referred to in paragraph 1 above comprise the Gulf of Mexico, the Caribbean Sea, that portion of the Atlantic Ocean West of longitude 55° West and South of latitude 30° North and all other areas within 150 miles of the Atlantic coast of the United States.

10. I have the honour to suggest that if the foregoing proposals are acceptable to the Government of the United States, this Note and Your Excellency's confirmatory reply shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States which shall enter into force on the date of your reply. It may be terminated by either Government on one month's notice but will continue to remain effective in respect of any proceedings based on action taken during its validity.

Accept, Excellency, the
renewed assurance of my
highest consideration.
(For the Secretary of State)

/s/ Michael St. Burton.[1]

[1] Michael St. E. Burton.

*The American Chargé d Affaires ad interim to the British Secretary of State for Foreign and Commonwealth Affairs*

EMBASSY OF THE
UNITED STATES OF AMERICA

London, November 13, 1981

No. 55

Excellency:

I have the honor to refer to your Note of November 13, 1981, which reads as follows:

> "I have the honour to refer to the recent discussions between representatives of our two Governments concerning the desire of the authorities of the United States to take more effective measures to suppress the unlawful importation of cannabis and other narcotic drugs into the United States.
>
> "Bearing in mind the special nature of this problem and having regard to the need for international co-operation in suppressing the illicit traffic in narcotic drugs, which is recognised in the Single Convention on Narcotic Drugs of 1961, I have the honour to propose the following:
>
> "1. The Government of the United Kingdom of Great Britain and Northern Ireland agree that they will not object to the boarding by the authorities of the United States, outside the limits of the territorial sea and contiguous zone of the United States and within the areas described in paragraph 9 below, of private vessels under the British flag in any case in which those authorities reasonably

believe that the vessel has on board a cargo of drugs for importation into the United States in violation of the laws of the United States.

"2. On boarding the vessel the authorities of the United States may address enquiries to those on board, examine the ship's papers and take such other measures as are necessary to establish the place of registration of the vessel. When these measures suggest that an offence against the laws of the United States relative to the importation of narcotic drugs is being committed, the Government of the United Kingdom agree that they will not object to the authorities of the United States instituting a search of the vessel.

"3. If the authorities of the United States then believe that an offence against the laws referred to in paragraph 2 above is being committed, the Government of the United Kingdom agree that they will not object to the vessel being seized and taken into a United States port.

"4. The Government of the United Kingdom may, within 14 days of the vessel's entry into port, object to the continued exercise of United States jurisdiction over the vessel for purposes of the laws referred to in paragraph 2 above, and the Government of the United States shall thereupon release the vessel without charge. The Government of the United States shall not institute forfeiture proceedings before the end of the period allowed for objection.

"5. The Government of the United Kingdom may, within 30 days of the vessel's entry into port, object to the prosecution of any United Kingdom national found on board the vessel, and the Government of the United States shall thereupon release such person. The Government of the United Kingdom agree that they will not otherwise object to the prosecution of any person found on board the vessel.

"6. Any action by the authorities of the United States shall be taken in accordance with this Agreement and United States law.

"7. In any case where a vessel under the British flag is boarded the authorities of the United States shall promptly inform the authorities of the United Kingdom of the action taken and shall keep them fully informed of any subsequent developments.

"8. If any loss or injury is suffered as a result of any action taken by the United States in contravention of these arrangements or any improper or unreasonable action taken by the United States pursuant thereto, representatives of the two Governments shall meet at the request of either to decide any question relating to compensation. Representatives of the two Governments shall in any case meet from time to time to review the working of these arrangements.

"9. The areas referred to in paragraph 1 comprise the Gulf of Mexico, the Caribbean Sea, that portion of the Atlantic Ocean West of longitude 55° West and South of latitude 30° North and all other areas within 150 miles of the Atlantic coast of the United States.

"10. I have the honour to suggest that if the foregoing proposals are acceptable to the Government of the United States, this Note and Your Excellency's confirmatory reply shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States which shall enter into force on the date of your reply. It may be terminated by either Government on one month's notice but will continue to remain effective in respect of any proceedings based on action taken during its validity.

His Excellency
The Right Honorable
The Lord Carrington, KCMG, MC,
Secretary of State for Foreign
and Commonwealth Affairs,
London.

I have the honor to inform you that the Government of the United States welcomes the cooperation offered by that Government in efforts to suppress the unlawful importation of narcotic drugs into the United States and to confirm that the foregoing proposals are acceptable to the Government of the United States which therefore agrees that your Note and this reply shall constitute an agreement between the Government of the United States and the Government of the United Kingdom of Great Britain and Northern Ireland which shall enter into force on the date of this reply.

Accept, Excellency, the renewed assurances of my highest consideration.

/s/ Edward J. Streator.[1]
Chargé d Affaires ad interim.

---

[1] Edward J. Streator.

[RELATED LETTER]

*The Head of the Maritime, Aviation and Environment Depart. Foreign and Commonwealth Affairs, to the American Econo Counselor*

Foreign and Commonwealth Office
London SW1A 2AH

Mr M P Boerner
Embassy of the
United States of America
Grosvenor Square
London W1A 1AE

Dear Mr Boerner,

THE SUPPRESSION OF THE UNLAWFUL IMPORTATION OF NARCOTIC DRUGS INTO THE UNITED STATES

With regard to the reference in paragraph 1 of the Note to "Private vessels under the British flag", the Government of the United Kingdom understand that term as referring in this context to private vessels registered in the United Kingdom or in any territory for whose international relations the Government of the United Kingdom are responsible.

With regard to paragraph 5 of the Note, the Government of the United Kingdom consider that all persons on board a British vessel should in principle enjoy equal treatment under the law. In agreeing not to object to prosecution by the United States of anyone other than a United Kingdom national the Government of the United Kingdom act on the understanding that questions relating to the prosecution of the nationals of other States are of primary concern to their State of nationality.

The Government of the United Kingdom do not consider that this Exchange of Notes should be regarded as setting a precedent for the conclusion of any further agreement affecting the freedom of passage of British ships on the high seas.

Yours sincerely,

/s/ Michael St. Burton
M St E Burton
Maritime, Aviation and
Environment Department